

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

TEAM WORLDWIDE CORPORATION, Plaintiff, v. ACADEMY, LTD D/B/A ACADEMY SPORTS + OUTDOORS, Defendant.	Case No. 2:19-cv-92-JRG-RSP LEAD CASE
ACE HARDWARE CORPORATION, AMAZON.COM, INC, AMAZON.COM LLC, BED BATH & BEYOND INC., COSTCO WHOLESALE CORPORATION, DICK'S SPORTING GOODS, INC., THE HOME DEPOT, INC., MACY'S, INC., MACY'S.COM, LLC, TARGET CORPORATION, and TARGET BRANDS, INC., SEARS, ROEBUCK AND CO., SEARS HOLDINGS CORPORATION, and TRANSFORM HOLDCO LLC, Defendants.	Case No. 2:19-cv-00093-JRG-RSP Case No. 2:19-cv-00094-JRG-RSP Case No. 2:19-cv-00095-JRG-RSP Case No. 2:19-cv-00096-JRG-RSP Case No. 2:19-cv-00097-JRG-RSP Case No. 2:19-cv-00098-JRG-RSP Case No. 2:19-cv-00099-JRG-RSP Case No. 2:19-cv-00100-JRG-RSP Case No. 2:20-cv-00006-JRG-RSP CONSOLIDATED CASES

DEFENDANTS' NOTICE OF RELATED FEDERAL CIRCUIT DECISION

Plaintiff Team Worldwide Corp. (“TWW”) asserted claims 1, 7, and 11-14 of U.S. Patent No. 9,211,018 (the “’018 Patent”)—the only patent currently asserted—in ten separate cases. (*See, e.g.*, Dkt. No. 1, ¶ 27.) These cases were consolidated for pretrial purposes. (*See* Dkt. Nos. 24, 34.) The Court ordered that the case against the Target Defendants will be tried first (Dkt. No. 375), and is currently set to begin on July 7, 2021.

Today, in deciding the Petitioners’ appeal from the Final Written Decision of the ’018 Patent, the Federal Circuit determined that “Intex satisfied its burden of proving obviousness” of claims 1, 7, and 11-14 of the ’018 Patent in *Intex Recreation Corp. et al. v. Team Worldwide Corp.*, Appeal No. 2020-1144 (appeal from IPR Case No. IPR2018-00859). (Ex. 1 [“Federal Circuit Decision”], at p. 13.) In reaching this conclusion, the Federal Circuit explained:

Intex’s argument regarding its proposed modification showed that Parienti was **already close to the challenged claims**, and **only a slight change was needed to satisfy the broadest reasonable interpretation of “wholly or partially” recessing a pump**. This showing, together with Intex’s showing that numerous references since the late 1800s illustrated prior artisans’ intuitive desire to recess pumps to save space, **satisfied Intex’s burden. The Board erred in concluding to the contrary.**

(*Id.*, p. 12 (emphases added).) As a result, the Federal Circuit “vacate[d] the Board’s determination that claims 1, 5, 7, and 11–14 are not unpatentable based on grounds 5 and 6,” and “remand[ed] for further proceedings consistent with this opinion.” (*Id.*, p. 13.) The Federal Circuit’s decision impacts every claim of the ’018 Patent currently asserted in this matter.

On remand, the Federal Circuit instructed the Board to evaluate TWW’s secondary considerations of nonobviousness, which the Board declined to initially evaluate “on the grounds that [it was] not necessary in light of [the Board’s prior] determinations.” (*Id.*) The Board previously evaluated and rejected nearly identical evidence of secondary considerations of nonobviousness from TWW in related IPR proceedings involving another patent that was

originally asserted in TWW's complaint in this matter. (Ex. 2, p. 95; *see also id.*, pp. 70-94; Ex. 3, p. 87; *see also id.*, pp. 61-86; Ex. 4, p. 88; *see also id.*, pp. 62-87.)

Defendants intend to file a motion to stay in view of the Federal Circuit Decision in short order but wanted to advise the Court of today's decision promptly. Defendants are mindful of the timing of the first trial involving the Target Defendants and its potential impact on the Court's upcoming schedule, including the other nine cases related to the Target case.

Dated: June 21, 2021

Respectfully submitted,

/s/ Reid E. Dodge

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). Therefore, this document was served on counsel of record, all of whom have consented to electronic service, on June 21, 2021.

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